

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WILLIAM DAVIS,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC,

Defendant.

2:13-cv-02061-RCJ-CWH

ORDER

This is a residential foreclosure avoidance case. Plaintiff William Davis is the owner of real property at 2769 Liberation Dr., Henderson, Nevada (the “Property”). (Second Am. Compl. ¶ 1, Feb. 21, 2014, ECF No. 14). Plaintiff has had difficulty making his mortgage payments on the Property, but he is not in default. (*See id.* ¶¶ 4–5). Plaintiff has attempted to modify his mortgage with Defendant Bayview Loan Servicing, LLC since July 2012 pursuant to the HAMP and HARP programs, but Defendant has refused to modify Plaintiff’s mortgage. (*See id.* ¶¶ 6–12).

Plaintiff sued Defendant in state court for breach of contract and promissory estoppel as to a putative modification agreement. Defendant removed the First Amended Complaint and moved to dismiss. The Court granted the motion to dismiss, giving Plaintiff leave to amend to state a claim for breach of contract or promissory estoppel. When Plaintiff failed to amend, Defendant moved to dismiss for failure to prosecute under Rule 41(b). The Court denied the motion and gave Plaintiff seven more days to amend. Plaintiff timely filed the Second Amended Complaint (“SAC”), listing claims for breach of contract, promissory estoppel, and unjust

12 Finally, the third claim for unjust enrichment is dismissed. Plaintiff had no leave to add
13 this claim, and in any case, Plaintiff does not allege having conferred any uncompensated benefit
14 upon Defendant. *See Unionamerica Mtg. v. McDonald*, 626 P.2d 1272, 1273 (Nev. 1981)
15 (quoting *Dass v. Epplen*, 424 P.2d 779, 780 (Colo. 1967)).

16 CONCLUSION

19 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

21 Dated this 17th day of April, 2014.

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